CF 1001 (3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 3768/2003

PETITIONER : Kalam Prasad Dinker
S/o Sarha Ram Dinker,
Aged about 37 years,
R/o Village:Rajpur
Post:Bitkuli Bazar,
Tehsil:Bhatapara
District Raipur (CG).

P. R. No. 3574/03
Presented by Shri G. Khetrapal
dated 14.11.03

VERSUS

RESPONDENTS :

1) State of Chhattisgarh
Through the Secretary,
'Panchayat Avum Gramin
Vikas Vibhag, DKS Bhawan,
Raipur (CG).

2) The Collector,
Raipur , District-Raipur.

3) The Sub Divisional Officer,
Bhatapara,Distt. Raipur.

4) Gram Panchayat,Khaperi (R),
Tehsil:Bhatapara,Distt.Raipur
Through it's Secretary,
Gram Panchayat,Khaperi (R),
Tehsil:Bhatapara,Distt.Raipur.

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14-11-03
Clerk to A G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(21)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 3768/03 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	9-1-2004 Ku. Pritha Ghosal, counsel for the petitioner. Miss Sharmila Singhai, Deputy Government Advocate takes notice for respondents 1 to 3. The petitioner has preferred this petition under Article 226/227 of the Constitution of India, calling in question the order dated 1-5-2003 whereby the petitioner has been removed from the post of Sarpanch under Section 40 of Gram Panchayat Raj Adhiniyam 1993. Facts leading to filing of this petition are that the petitioner was duly elected as Sarpanch of Gram Panchayat, Khaperi, Tehsil Bhatapara, District Raipur on 31-1-2000 for five years as per the provisions of Panchayat Raj Adiniyam. However, a criminal case was filed against the petitioner along with two persons and after completion of the trial: the petitioner was convicted under Section 302 read with Section 109 of the I.P.C. and sentenced to undergo imprisonment for life. Based on that conviction the learned S.D.O. Bhatapara vide order dated 1-5-2003 removed the petitioner from the post of Sarpanch under Section 40 of the Panchayat Raj Adhiniyam, 1993.	

[पीछे देखिये

(22)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक 37/68/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The learned counsel for the petitioner submitted that the petitioner has been removed without giving him any opportunity of hearing and moreover, the petitioner has already filed an appeal against his conviction and that appeal is pending. Therefore, during the pendency of the appeal the petitioner cannot be removed from the post of Sarpanch and his removal is illegal.

But, I do not find any substance in the arguments of the learned counsel for the petitioner for the reason that the conviction of the petitioner has not been suspended by the Appellate Court, therefore, the learned S.D.O. was right in removing the petitioner from the post of Sarpanch on the ground of conviction and sentence under Section 302 read with Section 109 of the I.P.C.

The learned counsel for the petitioner further submitted that respondents are going to conduct an election on 11th January 2003 for the post of Sarpanch which has fallen vacant on account of removal of the petitioner and after allowing of the appeal the petitioner will be entitled for reinstatement on the post of Sarpanch then that will create complications in the matter.

Having heard the learned counsel for the parties and having regard to the facts and circumstances of the case, I am of the opinion that if the election is conducted for the post of Sarpanch then that will be subject to the outcome of the result of the criminal

(23)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	appeal. In case the appeal of the petitioner is allowed and he is acquitted of the charges then the petitioner will be entitled to all the benefits arising out of the acquittal. Therefore, the writ petition is disposed of with a direction that if any election is conducted for the post of Sarpanch of village Khaperi which has fallen vacant on account of removal of the petitioner then that will be subject to the outcome of the result of the criminal appeal and if the appeal is allowed and he is acquitted of the charges then he will be entitled to all the reliefs which he can get on account of acquittal. Consequently, M.(W.)P. No.3394/2003 and I.A. No.10868/2003 also stand disposed of. Parties are entitled for certified copy of this order. Sd/- L.C.BHADOO Judge Barve	

[पीछे देखिये